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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/649,036	08/27/2003	Thomas C. Danaher	2641-P3015.001	5120
23399	7590	11/17/2004	EXAMINER	
REISING, ETHINGTON, BARNES, KISSELLE, P.C.			SANTOS, ROBERT G	
P O BOX 4390			ART UNIT	
TROY, MI 48099-4390			PAPER NUMBER	

3673

DATE MAILED: 11/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	10/649,036		DANAHER, THOMAS C. 	
	<b>Examiner</b>		<b>Art Unit</b>	
	Robert G. Santos		3673	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08/27/2003, 12/03/2003 & on 10/18/2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) 26-31 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6-9, 14-20, 22 and 34 is/are rejected.
- 7) ☒ Claim(s) 5, 10-13, 21, 23-25, 32 and 33 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some    \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>12032003</u> .  | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### *Election/Restrictions*

1. Claims 26-31 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on October 18, 2004.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-4, 6-9, 14-20, 22 and 34 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Pat. No. 5,343,887 to Danaher. With regards to claims 1, 7, 15, 16 and 22, Danaher '887 shows the claimed limitations of a bed-tent for providing an enclosure over a bed, comprising a canopy (10) having an open base, the canopy comprising spaced apart at least first and second panels (12, 14) and a flexible cover (16) extending between the panels to provide an enclosed interior space, each panel comprising at least one hoop (26) of flexible, resilient strip material and a sheet of flexible fabric (28) in the space within and marginally secured to the hoop generally at the perimeter thereof, the sheets being maintained taut by, and resisting collapse of, the hoops to which the sheets are secured (as described in column 7, lines 7-11); retainers (36, 38) for releasably securing the canopy to the bed (34); and an entry (33) to the canopy, at least

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one of the hoops capable of being twisted or wound into a relatively flat coil of reduced diameter for storage (as shown in Figures 14 & 15 and as described in column 8, lines 60-68 and in column 9, lines 1-8). As concerns claims 2 & 19 and with further regards to claim 22, the reference is considered to show the use of a mattress (34) for the bed, the mattress having a top surface, a peripheral edge, and four corners, the open base of the canopy being substantially coextensive with the peripheral edge of the mattress, and the retainers (36, 38) releasably engaging the mattress in Figure 3 and in column 7, lines 35-42. With regards to claim 3 and with further regards to claim 7, the reference discloses the use of a flexible supporting frame (18, 20, 22, 24) disposed externally and releasably connected to the canopy for holding the panels spaced apart and generally erect (see Figure 1 and column 8, lines 9-11). As concerns claim 4 and with further regards to claim 7, the reference is considered to show the use of receiving means (130) on the canopy for removably receiving end portions of the frame in Figures 4 & 5 and in column 8, lines 50-59. As concerns claims 6 and 14, the reference discloses the use of support means (30) to maintain the canopy on the top surface of the mattress. With further regards to claim 7, the reference is considered to show the use of connectors (82, 84) to releasably attach the canopy to the frame in Figures 4 & 5 and in column 8, lines 50-59. As concerns claims 8, 9, 17 and 18, the reference discloses a condition wherein the frame comprises a plurality of elongated, tubular segments (40-45) removably connected end-to-end in a linear series by elastic cording (70, 72) under tension extending lengthwise through the segments (see Figures 9, 10 & 12; column 7, lines 45-46; and column 8, lines 35-43). With regards to claim 20, the reference is considered to show a condition wherein the hoop (26) is a continuous annulus in Figures 14 & 15.

***Allowable Subject Matter***

4. Claims 5, 10-13, 21, 23-25, 32 and 33 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The examiner respectfully asserts that one of ordinary skill in the art would not have found it obvious to provide the bed-tent of Danaher '887 with retainers comprising flexible straps as recited in claims 5, 13, 23-25, 32 and 33; first and second flexible stanchions releasably connected to the first and second panels, respectively, and a frame member *disposed above the canopy* and extending between and holding generally upright the first and second stanchions as recited in claims 10-12; and a hoop which is continuous except for a transverse open split as recited in claim 21.

***Conclusion***

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Tomason '329, Danaher '596, Ventura '218, November '848, Florez '953, Funk '436, Haynes et al. '694, Canfield '888, Canfield '227, Howard '768, Phillips '330, Sok Kyu '204, Cantwell et al. '958, Lundblade '355, Watts et al. '651, Watts et al. '413, Robinson et al. '181, Robinson et al. '159, Cantwell et al. '953, MacKenzie '609, Ipsen, Jr. '279, Thompson '058, Mackenzie '827, Moorhead et al. '825, Morris '021, Willis '953, Porter '101, Blanchard '030, Mongan et al. '802, Blanchard '057, Nelson '043 and Nelson '056.

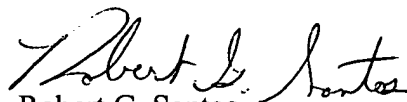
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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert G. Santos whose telephone number is (703) 308-7469.

The examiner can normally be reached on Tues-Fr and first Mondays, 10:30 a.m. to 8:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather C. Shackelford can be reached on (703) 308-2978. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Robert G. Santos  
Primary Examiner  
Art Unit 3673

R.S.  
November 10, 2004